

ICO call for views on a direct marketing code of practice

The Information Commissioner is calling for views on a direct marketing code of practice.

The Data Protection Act 2018 requires the Commissioner to produce a code of practice that provides practical guidance and promotes good practice in regard to direct marketing.

While direct marketing is an important and useful tool to help organisations engage with people in order to grow their business or to publicise and gain support for their causes, it can also be intrusive and have a negative impact on people if done badly. This can cause reputational damage to organisations and, in some cases, result in fines or other regulatory action for breaking data protection laws.

So it is important that organisations ensure their marketing activities are compliant with data protection legislation (the General Data Protection Regulation and Data Protection Act 2018) and, where necessary, the Privacy and Electronic Communications Regulations 2003 (PECR).

We have previously published detailed [direct marketing guidance](#). The new code will build on that guidance and address the aspects of the new legislation relevant to direct marketing such as transparency and lawful bases for processing, as well as covering the rules on electronic marketing (for example emails, text messages, phone calls) under PECR.

The European Union is in the process of replacing the current e-privacy law (and therefore PECR) with a new ePrivacy Regulation (ePR). However the new ePR is yet to be agreed and there is no certainty about what the final rules will be. Because of this we intend for the direct marketing code to only cover the current PECR rules until the ePR is agreed. Once the ePR is finalised and the UK position in relation to it is clear we will produce an updated version of the code which takes this into account as appropriate.

This call for views is the first stage of the consultation process. The Commissioner is seeking input from relevant stakeholders, including trade associations, data subjects and those representing the interests of data subjects. We will use the responses we receive to inform our work in developing the code.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Call for Views
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the call for views, please email the [Direct Marketing Code team](#).

Please send us your views by **24 December 2018**.

Privacy statement

For this call for views we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Questions

Q1 The code will address the changes in data protection legislation and the implications for direct marketing. What changes to the data protection legislation do you think we should focus on in the direct marketing code?

- Clarity must be provided on how research from the public record - i.e. the supporter's website or public info such as Companies' House - can or cannot be used for segmentation or otherwise tailoring our offering - when we are legitimately in a position to communicate with someone.
- Clarity on the use of marketing lists for email communications. What can be included in content for charity and not-for-profits? Eg. If a charity sends regular e-bulletins to contacts who have opted in, is it possible to highlight opportunities to donate under the 'usual course of business' contacts?
- The distinction between personal and corporate/business leads and how/if they are treated differently.
- Use of lead generation agencies. Responsibilities of the organisation receiving/buying the data.
- Use of suppression lists vs the GDPR principle on the data we hold and why we hold it.
- Implications of lead generation and building direct marketing contact lists through social media channels.

Q2 Apart from the recent changes to data protection legislation are there other developments that are having an impact on your organisation's direct marketing practices that you think we should address in the code?

☒ Yes

☐ No

Q3 If yes please specify

- There is an obvious tension between the fundraising/marketing and data protection compliance arms of any organisation. The code must be written in such a way that the meaning/interpretation/implementation is made clear by the ICO and **not** through a translation offered by the compliance function within an organisation. The code must not be written in jargon or prose impenetrable to the uninitiated.

If the data protection part of an organisation has to do any translation/clarification for the fundraising and marketing function it will create conflicts and tensions that will reduce the outputs of organisations, create unforeseen effects and reduce overall compliance.

Q4 We are planning to produce the code before the draft ePrivacy Regulation (ePR) is agreed. We will then produce a revised code once the ePR becomes law. Do you agree with this approach?

☒ Yes

☐ No

Q5 If no please explain why you disagree

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Q6 Is the content of the ICO's existing direct marketing guidance relevant to the marketing that your organisation is involved in?

☒ Yes

☐ No

Q7 If no what additional areas would you like to see covered?

Q8 Is it easy to find information in our existing direct marketing guidance?

☒ Yes

☐ No

Q9 If no, do you have any suggestions on how we should structure the direct marketing code?

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Q10 Please provide details of any case studies or marketing scenarios that you would like to see included in the direct marketing code.

More case studies covering email for charities (as opposed to phone and text).

Q11 Do you have any other suggestions for the direct marketing code?

About you

Q12 Are you answering these questions as?

- ☐ A public sector worker
- ☐ A private sector worker
- ☒ A third or voluntary sector worker
- ☐ A member of the public
- ☐ A representative of a trade association
- ☐ A data subject
- ☐ An ICO employee
- ☐ Other

If you answered 'other' please specify:



Q13 Please provide the name of the organisation that you are representing.

Ambitious about Autism

Q14 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

@ambitiousaboutautism.org.uk

Thank you for taking the time to share your views and experience.